Remarks/Arguments

In response to the Restriction/election requirement dated 05/03/2006, Applicants submit the following response.

The Examiner has requested restriction of the present application into two groups:

Group I comprising Claims 1-9, and 23-30, drawn to a system to provide pulses to the vagus nerves, Classified in Class 607, subclass 2.

Group II comprising Claims 10-22, drawn to a method for providing electric pulses to vagus nerve, Classified in Class 607, subclass 2.

As per Applicant's conversation with examiner Yun Haeng Nmn Lee, there seems to be a typographical error as Claims 1-9 and 10-22 are drawn to a method of providing electric pulses to vagus nerve, Classified in Class 607, subclass 2.

Claims 23-30, are drawn to a system to provide pulses to the vagus nerves, Classified in Class 607, subclass 2.

The Applicant presumes the Examiner intended claims1-22 in group II as process to practice, and claims 23-30 to group I as apparatus for practice.

The Examiner has stated that the inventions are distinct if it can be shown that either: (1) the process as claimed can be used to practice another materially different apparatus or by hand, or (2) the apparatus as claimed can also be used to practice another and materially different process (MPEP § 806.05 (e). In this case the apparatus as claimed can be used to practice another and materially different process such as cardiac stimulation.

The Examiner's restriction of Claims 23-30 is respectfully traversed. All of the claims in this application generally relate to treating atrial fibrillation, congestive heart failure, inappropriate sinus tachycardia, or refractory hypertension, by providing electrical pulses to vagus nerve. The Applicants respectfully submit that the apparatus as claimed cannot be used to practice another and materially different process such as cardiac stimulation. The system as disclosed in the specification and recited in the claim cannot be used for cardiac pacing because cardiac pacing/stimulation is always based on sensing intrinsic activity from the heart.

Also, it is well established that where a single field of search thoroughly covers all of the claims in an application, different classifications in the Patent and Trademark Office are not controlling. Indeed, at the beginning of M.P.E.P. § 803 entitled "Restriction- when Proper," the Patent Office established the following standards for restriction requirement:

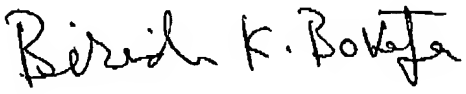
"If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even if it includes claims to a distinct or independent invention" M.P.E.P. § 803.

Here, searching and examining all of these claims in a single application would not impose a serious burden on the Examiner, particularly since all the pending claims have been categorized in the same class and subclass. Rather, Applicant submits that the Restriction Requirement in this case only serves to increase the time, expense and effort to prosecute this application, both to the Patent and Trademark Office and to the Applicant. As such, Applicant respectfully requests the Examiner to reconsider and withdraw the restriction requirement.

If the Examiner disagrees and maintains the restriction requirement as set forth in the Office Action, Applicants elect with traverse to proceed with the prosecution of the Claims in Group II, comprising Claims 1-22, Claims 23-30 are withdrawn. The applicants reserve the right to pursue the subject matter of Claims 23-30 in the present application or in a continuing application(s). The

Examiner is invited to contact the undersigned should the Examiner deem such communication to be helpful.

Respectfully submitted,



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